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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/353,831    07/15/99    AKRIDGE

A    AIF32886

EXAMINER
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IM52/0226

JOSEPH H MCGLYNN  
6111 SADDLE HORN DRIVE  
FAIRFAX VA 22030

BAHTA, A	
ART UNIT	PAPER NUMBER

1775  
DATE MAILED:

02/26/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/353,831

Applicant(s)  
Akridge

Examiner  
Abraham Bahta

Group Art Unit  
1775



☒ Responsive to communication(s) filed on Dec 14, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 3-11 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 3-11 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 3-11 are pending in this application. Claims 1-2 are canceled.

*Claim Rejections - 35 U.S.C. § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pallone (USP 1,442,290) in view of Koshalko (USP 1,538,562).

Pallone teaches a windmill including a frame having thereon a body representing a bird including oscillatory flapping wings, with operating connection with a windwheel shaft, for the purpose of giving the impression that the bird is flying. See col. 1, lines 10-17. The figure which is a bird is mounted on a frame of a rectangular shape. See Fig. 1 and col. 1 line 55. Further, a crank is connected to the shaft. See col. 2, lines 60-66. The reference also teaches the shaft comprises a crank. The crank has portions wherein one portion is connected to the shaft perpendicularly and the other portion (9) parallel to the shaft. See Fig. 1.

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The reference does not require means for controlling the speed of the movable bird.

Koshalko teaches an air-propeller operated device comprising means for controlling the speed of a movable device. See col. 2, lines 78-87. Further, the reference teaches the device may be attached to an automobile. See col. 1, lines 13-17.

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide means for controlling the speed of a movable part and means for attaching the device to an automobile from the teaching of Koshalko in the teaching of Pallone in order to slowdown a moving part so that the device will neither become injured from too rapid operation nor operate so fast as to mar the pleasing appearance of the movement of the moving parts.

#### **Response to Applicant's arguments**

The applicant argues that neither the primary reference Pallone nor the secondary reference Koshalko discloses the structure such that "a first element mounted behind said propeller, a lever connecting said first element to a brake element, said brake element being in contact with said shaft" as recited in new claim 11. The applicant admits that Koshalko in col. 2, lines 79-82 teaches "when the wind pressure or velocity becomes too great, the shaft slides the collar then forces the washer against the upright, resulting in a braking action. The Examiner contends that given the above teaching it would be obvious to one of ordinary skill in the art to modify the braking system of Koshalko by providing a lever because the "collar" of Koshalko

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works in the same way as the lever of present claimed invention, in that it transmits force to the washer resulting in a braking action. The applicant argues that the American Heritage dictionary defines "lever" as "A simple machine consisting of a rigid bar pivoted on a fixed point and used to transmit force, as in raising or moving a weight at one end by pushing down on the other".

However, the Examiner contends that a lever is also a tool that adjusts or operates a mechanism or it is a "means or a tool of accomplishing". Further, on page 9, lines 12-14 of the disclosure the applicant admits "general, the specific size and structure of the airbrake mechanism can be designed through testing and experimentation". Thus, it would have been obvious to one of ordinary skill in the art to modify or employ a suitable braking system to the moving part of the structure as a matter of obvious design choice. Absent a showing of unexpected results, the present claimed invention is obvious over the references.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Abraham Bahta at telephone number (703) 308-4412. The Examiner can normally be reached Monday-Friday from 9:30 AM -6:00 PM (EST).


If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor Deborah, Jones, can be reached on (703) 308-3822.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



A. Bahta

01/21/01

  
DEBORAH JONES  
SUPERVISOR, ART UNIT 1775